

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No: 5:21-CV-00213-M

CAPITAL READY MIX CONCRETE,)
LLC,) ORDER ON DEFENDANTS' MOTION TO
Plaintiff,) DISMISS AND COMPEL ARBITRATION
v.) UNDER 9 U.S.C. §§ 3, 4; OR,
ASTEC, INC.,) ALTERNATIVELY, TO DISMISS UNDER
CEI ENTERPRISES, INC., and) *FORUM NON CONVENIENS*; OR,
REXCON, INC.,) ALTERNATIVELY, TRANSFER
Defendants.) PURSUANT TO 28 U.S.C. § 1404(a); OR
) ALTERNATIVELY, TO DISMISS
) PURSUANT TO FED. R. CIV. P. 12(b)(6)
)

THIS MATTER comes before the court on the Motion of Defendants, Astec, Inc., CEI Enterprises, Inc., and Rexcon, Inc. (collectively, "Defendants"), to Dismiss and Compel Arbitration under 9 U.S.C. §§ 3, 4; or, alternatively, to Dismiss under *Forum Non Conveniens*, or, alternatively, Transfer pursuant to 28 U.S.C. § 1404(a); or, alternatively, to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (the "Motion") [DE 11]. With the consent of Defendants and Plaintiff, Capital Ready Mix Concrete, LLC ("CRMC" or "Plaintiff"), the Motion is granted in part and denied, without prejudice, in part.

THEREFORE, IT IS HEREBY ORDERED as follows:

1. Defendants' Motion to Dismiss this action pending arbitration is DENIED.
2. Defendants' Motion to Compel arbitration is GRANTED. This action is hereby STAYED pending arbitration in Chattanooga, TN, conducted in accordance with the American Arbitration Association's Commercial Arbitration Rules. Within sixty days of the date of this order, and every sixty days thereafter, the parties shall file a joint report informing the court of the status of the arbitration proceedings.

3. Defendants' Motion to Dismiss under *forum non conveniens* is DENIED as moot.

4. Defendants' Motion to Transfer pursuant to 28 U.S.C. § 1404(a) is DENIED as moot.

5. Defendants' Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED as moot, without prejudice to Defendants' right to file such a Motion or seek comparable relief in arbitration.

6. This Court shall retain jurisdiction for further proceedings. Upon conclusion of the arbitration, the parties shall notify the court by a joint status report informing the court of any necessary further proceedings.

SO ORDERED this 24th day of June, 2021.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

CONSENTED AND AGREED TO:

FOR PLAINTIFF

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